



**NOV 28 2001**

Dykema Gossett PLLC  
Franklin Square, Third Floor West  
1300 I Street, N.W.  
Washington, DC 20005

In re Application of SAUER et al	:	
U.S. Application No.: 09/446,128	:	DECISION ON
PCT Application No.: PCT/EP98/03349	:	
Int. Filing Date: 04 June 1998	:	RENEWED PETITION
Priority Date: 04 July 1997	:	
Attorney Docket No.: 66376-223-7 (formerly A-6865)	:	UNDER 37 CFR 1.47(a)
For: PROCESS FOR FURTHER PROCESSING	:	
OF SMALL GLASS PARTICLES	:	

This is in response to applicants' "Renewed Petition Under 37 C.F.R. §1.47(a)" filed 26 September 2001, requesting that the present application be accepted for national stage processing without the signature of joint inventor Sarolf Sauer. The renewed petition further requests that the current power of attorney be revoked and a new power of attorney be entered.

### **BACKGROUND**

On 04 June 1998, applicants filed international application PCT/EP98/03349, which claimed priority of an earlier German application filed 04 July 1997. A Demand for international preliminary examination, in which the United States was elected, was filed on 04 January 1999, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 04 January 2000.

On 28 December 1999, applicants filed national stage papers in the United States including, *inter alia*, the requisite basic national fee as required by 35 U.S.C. 371(c)(1).

On 03 March 2000, the United States Designated/Elected Office mailed a "Notification of Missing Requirements Under 35 U.S.C. 371" (Form PCT/DO/EO/905), indicating that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 03 April 2000, applicants filed a petition requesting that the present U.S. national stage application be accepted without the signature of joint inventor Sauer. The petition was accompanied by the requisite petition fee, a declaration signed by joint inventor Christian Klepsch, and the appropriate surcharge under 37 CFR 1.492(e) for the late declaration filing.

On 28 June 2000, the PCT Legal Office of the USPTO dismissed the 03 April 2000 petition on grounds that it failed to demonstrate that a bona fide attempt was made to present a copy of the application papers to Sauer at his last known address and for a lack of sufficient evidence of Sauer's purported refusal to sign.

On 04 August 2000, applicants filed a renewed petition under 37 CFR 1.47(a). The petition was accompanied by a letter signed by Sauer which purportedly demonstrates Sauer's express refusal to sign the declaration.

On 08 November 2000, the PCT Legal Office dismissed the 04 August 2000 petition on grounds that it failed to demonstrate that a bona fide attempt was made to present a copy of the application papers to Sauer.

On 04 April 2001, applicants filed a renewed petition under 37 CFR 1.47(a) and a supplement to the renewed petition.

On 26 June 2001, the PCT Legal Office dismissed the 04 April 2001 petition on grounds that the declaration filed 03 April 2000 is improper.

On 26 September 2001, applicants filed the present renewed petition under 37 CFR 1.47(a) along with a new declaration.

## **DISCUSSION**

### **I. Renewed Petition Under 37 CFR 1.47(a)**

A petition under 37 CFR 1.47(a) must be accompanied by: (1) an oath or declaration by each applicant on his or her own behalf and on behalf of the nonsigning joint inventor, (2) factual proof that the missing joint inventor refuses to join in the application or cannot be reached after diligent effort, (3) the fee set forth in 37 CFR §1.17(i), and (4) the last known address of the nonsigning joint inventor. See 37 CFR 1.47(a).

Applicants have previously satisfied items (2), (3), and (4) above.

With regard to item (1), the declaration filed 26 September 2001 is in compliance with 37 CFR 1.497.

Therefore, all the requirements for a petition under 37 CFR 1.47(a) have been met.

## II. Revocation and Appointment of Attorney

MPEP 402.07 states in relevant part,

A power of attorney by the assignee of the entire interest revokes all powers given by the applicant and prior assignees if the assignee establishes their right to take action as provided in 37 CFR 3.73(b). See MPEP § 324. . . .

In an application which has been accorded status under 37 CFR 1.47(a), or for which status under 37 CFR 1.47(a) has been requested, a power of attorney given by the inventors who have signed the declaration (available inventors) may be revoked by an assignee of the entire interest of the available inventors.

According to 37 CFR 3.73(b), ownership of the application may be established by: (A) submitting documentary evidence of a chain of title from the original owner to the assignee; or (B) specifying by reel and frame number where such evidence is recorded in the USPTO. In the present case, applicants have specified by reel and frame number three assignment documents which are recorded in the USPTO. Furthermore, applicants have supplied acceptable English translations of relevant text. Thus, the revocation of power of attorney and appointment of new power of attorney is accepted.

## CONCLUSION

For the reasons above, the petition under 37 CFR 1.47(a) is GRANTED.

This application has an international filing date of 04 June 1998 and a date under 35 U.S.C. 371 of 26 September 2001.

As set forth in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the nonsigning inventor at the last known of record and will be published in the *Official Gazette*.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.



Bryan Tung  
PCT Legal Examiner  
PCT Legal Office

Telephone: 703-308-6614  
Facsimile: 703-308-6459